

**Introduced by Senator Corbett**

January 22, 2009

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An act to amend Section 1770 of the Civil Code, and to amend Sections 3050, 11710, and 11711 of, and to add Sections 4456.5 and 11713.05 to, the Vehicle Code, relating to vehicles.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 95, as introduced, Corbett. Car Buyers' Protection Act of 2009.

(1) Existing law makes it unlawful, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising, transfer, and sale of motor vehicles.

This bill would enact the California Car Buyers' Protection Act of 2009, which, among other things, would make it unlawful for a dealer who acquires a used vehicle with a balance due to a secured party to fail to pay off the entire balance prior to advertising the vehicle for sale or transferring or selling the vehicle and would increase the amount of a dealer's bond from \$50,000 to \$250,000 for a franchisee of new motor vehicles and to \$100,000 for independent dealers.

(2) Existing law creates within the Department of Motor Vehicles a New Motor Vehicle Board, which adjudicates disputes between new motor vehicle franchisees and their respective franchisors and hears appeals on decisions of the department affecting new motor vehicle dealers. The board also mediates disputes between members of the public and new motor vehicle dealers, distributors, and manufacturers.

This bill would exclude disputes involving motor vehicle purchasers and lessees from this authority of the board to mediate disputes.

(3) Existing law requires, among other things, that if any person suffers any loss or damage by reason of a specified violation of law by the dealer or his or her salesperson, then that person has a right of action

against the dealer, the salesperson, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

This bill would instead require that if a person suffers any loss or damage by reason of any fraud or contract or statutory violation practiced on him by a licensed dealer or one of the dealer's salespersons acting for the dealer, in his or her behalf, or within the scope of the employment of his or her salesperson in connection with the purchase or lease of a motor vehicle, then that person shall have a right of action against the dealer, his or her salesperson, and the surety upon the dealer's bond for actual damages plus any incidental and consequential damages and reasonable attorneys fees.

The bill would also make technical and conforming changes to these provisions.

By creating new crimes, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Car Buyers Protection Act of 2009.

3 SEC. 2. (a) The Legislature finds and declares all of the  
4 following:

5 (1) Many car buyers have lost confidence in the automotive  
6 marketplace, resulting in a reduction of revenues for sellers, local  
7 and county governments, and the state, contributing to job losses  
8 and the state's overall economic downturn.

9 (2) During the past year at least 480 licensed and used auto  
10 dealerships have gone out of business in California, far more than  
11 in any other state, and it is projected that the numbers will continue  
12 to accelerate for the foreseeable future.

13 (3) When consumers choose to purchase vehicles from auto  
14 dealerships that are licensed by the Department of Motor Vehicles,

1 they have a reasonable expectation that the dealerships have  
2 sufficient resources to honor their contractual commitments.

3 (4) Car buyers have no reliable way to know in advance whether  
4 an auto dealer is on the brink of insolvency or is on a sound  
5 financial footing.

6 (5) When licensed auto dealerships go out of business they often  
7 fail to pay off liens, as agreed, and also fail to honor warranties,  
8 service contracts, and other services for which car buyers have  
9 paid in advance, costing thousands of car buyers millions of dollars  
10 in losses.

11 (6) The current federal assistance contemplated by the Bush  
12 Administration fails to provide any relief for car buyers, while  
13 providing taxpayer dollars to assist the auto manufacturers, dealers,  
14 and workers who are seeking assistance from the American public;  
15 yet it is ultimately car buyers who will determine the fate of our  
16 domestic auto industry by buying cars.

17 (7) When licensed auto dealerships go out of business without  
18 honoring their obligations, car buyers often face ruinous  
19 consequences, through no fault of their own, resulting in harm to  
20 their credit, repossessions that remain on their credit reports for  
21 seven to 10 years, job losses due to a lack of transportation, home  
22 foreclosures, and bankruptcy.

23 (8) The Department of Motor Vehicles projects that the current  
24 funding available for the Consumer Recovery Fund (CRF)  
25 established by enactment in 2007 of Senate Bill 729 (Padilla) will  
26 not be sufficient to meet all the demands made upon the CRF by  
27 car buyers with legitimate complaints. Even if sufficient funds  
28 were available, there is no authority to provide restitution from  
29 the CRF for losses incurred involving prepaid products, warranties,  
30 or services or to restore the credit of consumers whose credit is  
31 harmed by dealer insolvencies lost jobs, lost income, or other  
32 damages consumers suffer due to a lack of transportation when  
33 vehicles are repossessed because auto dealers failed to pay off  
34 liens as promised.

35 (9) Honest dealers are also adversely impacted when  
36 unscrupulous auto dealers siphon off business and then harm the  
37 credit of their customers by going out of business without paying  
38 liens, as promised, shrinking the automotive market at precisely  
39 the time when it is sound public policy to expand the market and  
40 accelerate sales of newer, safer, cleaner motor vehicles.

1 (10) California has established the New Motor Vehicle Board  
2 which has the authority to overrule decisions rendered by the  
3 Department of Motor Vehicles to discipline licensees in matters  
4 of resolving disputes between dealers and manufacturers.

5 (11) The New Motor Vehicle Board lacks the authority to require  
6 licensees to provide any actual relief to car buyers, except for  
7 mediating disputes between the public and licensees, which is at  
8 best redundant with a function of the Department of Consumer  
9 Affairs.

10 (12) Most auto manufacturers voluntarily participate in dispute  
11 resolution programs overseen and certified by the Department of  
12 Consumer Affairs as complying with minimum standards  
13 promulgated by the Federal Trade Commission, unlike the process  
14 offered by the New Motor Vehicle Board, which sometimes leads  
15 to lengthy delays.

16 SEC. 3. Section 1770 of the Civil Code is amended to read:

17 1770. (a) The following unfair methods of competition and  
18 unfair or deceptive acts or practices undertaken by ~~any~~ a person  
19 in a transaction intended to result or ~~which~~ that results in the sale  
20 or lease of goods or services to ~~any~~ a consumer are unlawful:

21 (1) Passing off goods or services as those of another.

22 (2) Misrepresenting the source, sponsorship, approval, or  
23 certification of goods or services.

24 (3) Misrepresenting the affiliation, connection, or association  
25 with, or certification by, another.

26 (4) Using deceptive representations or designations of  
27 geographic origin in connection with goods or services.

28 (5) Representing that goods or services have sponsorship,  
29 approval, characteristics, ingredients, uses, benefits, or quantities  
30 ~~which~~ that they do not have or that a person has a sponsorship,  
31 approval, status, affiliation, or connection ~~which~~ that he or she  
32 does not have.

33 (6) Representing that goods are original or new if they have  
34 deteriorated unreasonably or are altered, reconditioned, reclaimed,  
35 used, or secondhand.

36 (7) Representing that goods or services are of a particular  
37 standard, quality, or grade, or that goods are of a particular style  
38 or model, if they are of another.

39 (8) Disparaging the goods, services, or business of another by  
40 false or misleading representation of fact.

1 (9) Advertising goods or services with intent not to sell them  
2 as advertised.

3 (10) Advertising goods or services with intent not to supply  
4 reasonably expectable demand, unless the advertisement discloses  
5 a limitation of quantity.

6 (11) Advertising furniture without clearly indicating that it is  
7 unassembled if that is the case.

8 (12) Advertising the price of unassembled furniture without  
9 clearly indicating the assembled price of that furniture if the same  
10 furniture is available assembled from the seller.

11 (13) Making false or misleading statements of fact concerning  
12 reasons for, existence of, or amounts of price reductions.

13 (14) Representing that a transaction confers or involves rights,  
14 remedies, or obligations ~~which~~ *that* it does not have or involve, or  
15 ~~which~~ *that* are prohibited by law.

16 (15) Representing that a part, replacement, or repair service is  
17 needed when it is not.

18 (16) Representing that the subject of a transaction has been  
19 supplied in accordance with a previous representation when it has  
20 not.

21 (17) Representing that the consumer will receive a rebate,  
22 discount, or other economic benefit, if the earning of the benefit  
23 is contingent on an event to occur subsequent to the consummation  
24 of the transaction.

25 (18) Misrepresenting the authority of a salesperson,  
26 representative, or agent to negotiate the final terms of a transaction  
27 with a consumer.

28 (19) Inserting an unconscionable provision in the contract.

29 (20) Advertising that a product is being offered at a specific  
30 price plus a specific percentage of that price unless (A) the total  
31 price is set forth in the advertisement, which may include, but is  
32 not limited to, shelf tags, displays, and media advertising, in a size  
33 larger than any other price in that advertisement, and (B) the  
34 specific price plus a specific percentage of that price represents a  
35 markup from the seller's costs or from the wholesale price of the  
36 product. This subdivision shall not apply to in-store advertising  
37 by businesses ~~which~~ *that* are open only to members or cooperative  
38 organizations organized pursuant to Division 3 (commencing with  
39 Section 12000) of Title 1 of the Corporations Code ~~where~~ *if* more

1 than 50 percent of purchases are made at the specific price set forth  
2 in the advertisement.

3 (21) Selling or leasing goods in violation of Chapter 4  
4 (commencing with Section 1797.8) of Title 1.7.

5 (22) (A) Disseminating an unsolicited prerecorded message by  
6 telephone without an unrecorded, natural voice first informing the  
7 person answering the telephone of the name of the caller or the  
8 organization being represented, and either the address or the  
9 telephone number of the caller, and without obtaining the consent  
10 of that person to listen to the prerecorded message.

11 (B) This subdivision does not apply to a message disseminated  
12 to a business associate, customer, or other person having an  
13 established relationship with the person or organization making  
14 the call, to a call for the purpose of collecting an existing  
15 obligation, or to any call generated at the request of the recipient.

16 (23) The home solicitation, as defined in subdivision (h) of  
17 Section 1761, of a consumer who is a senior citizen ~~where~~ if a loan  
18 is made encumbering the primary residence of that consumer for  
19 the purposes of paying for home improvements and ~~where~~ the  
20 transaction is part of a pattern or practice in violation of either  
21 subsection (h) or (i) of Section 1639 of Title 15 of the United States  
22 Code or subsection (e) of Section 226.32 of Title 12 of the Code  
23 of Federal Regulations.

24 A third party shall not be liable under this subdivision unless  
25 (A) there was an agency relationship between the party who  
26 engaged in home solicitation and the third party or (B) the third  
27 party had actual knowledge of, or participated in, the unfair or  
28 deceptive transaction. A third party who is a holder in due course  
29 under a home solicitation transaction shall not be liable under this  
30 subdivision.

31 (24) (A) Charging or receiving an unreasonable fee to prepare,  
32 aid, or advise any prospective applicant, applicant, or recipient in  
33 the procurement, maintenance, or securing of public social services.

34 (B) For purposes of this paragraph, the following definitions  
35 shall apply:

36 (i) "Public social services" means those activities and functions  
37 of state and local government administered or supervised by the  
38 State Department of Health Care Services, the State Department  
39 of Public Health, or the State Department of Social Services, and  
40 involved in providing aid or services, or both, including health

1 care services and medical assistance, to those persons who, because  
2 of their economic circumstances or social condition, are in need  
3 of that aid or those services and may benefit from them.

4 (ii) “Unreasonable fee” means a fee that is exorbitant and  
5 disproportionate to the services performed. Factors to be  
6 considered, when appropriate, in determining the reasonableness  
7 of a fee, are based on the circumstances existing at the time of the  
8 service and shall include, but not be limited to, all of the following:

- 9 (I) The time and effort required.  
10 (II) The novelty and difficulty of the services.  
11 (III) The skill required to perform the services.  
12 (IV) The nature and length of the professional relationship.  
13 (V) The experience, reputation, and ability of the person  
14 providing the services.

15 (C) Paragraph (24) shall not apply to attorneys licensed to  
16 practice law in California, who are subject to the California Rules  
17 of Professional Conduct and to the mandatory fee arbitration  
18 provisions of Article 13 (commencing with Section 6200) of  
19 Chapter 4 of Division 3 of the Business and Professions Code,  
20 when the fees charged or received are for providing representation  
21 in administrative agency appeal proceedings or court proceedings  
22 for purposes of procuring, maintaining, or securing public social  
23 services on behalf of a person or group of persons.

24 (25) *Failure of a dealer as defined in Section 285 of the Vehicle*  
25 *Code to comply with Section 4456.5, which requires dealers who*  
26 *acquire a used vehicle with a balance due to a secured party to*  
27 *pay off the entire balance prior to advertising the vehicle for sale*  
28 *or transferring or selling the vehicle.*

29 (b) (1) It is an unfair or deceptive act or practice for a mortgage  
30 broker or lender, directly or indirectly, to use a home improvement  
31 contractor to negotiate the terms of any loan that is secured,  
32 whether in whole or in part, by the residence of the borrower and  
33 ~~which~~ *that* is used to finance a home improvement contract or any  
34 portion thereof. For purposes of this subdivision, “mortgage broker  
35 or lender” includes a finance lender licensed pursuant to the  
36 California Finance Lenders Law (Division 9 (commencing with  
37 Section 22000) of the Financial Code), a residential mortgage  
38 lender licensed pursuant to the California Residential Mortgage  
39 Lending Act (Division 20 (commencing with Section 50000) of  
40 the Financial Code), or a real estate broker licensed under the Real

1 Estate Law (Division 4 (commencing with Section 10000) of the  
2 Business and Professions Code).

3 (2) This section shall not be construed to either authorize or  
4 prohibit a home improvement contractor from referring a consumer  
5 to a mortgage broker or lender by this subdivision. However, a  
6 home improvement contractor may refer a consumer to a mortgage  
7 lender or broker if that referral does not violate Section 7157 of  
8 the Business and Professions Code or any other provision of law.  
9 A mortgage lender or broker may purchase an executed home  
10 improvement contract if that purchase does not violate Section  
11 7157 of the Business and Professions Code or any other provision  
12 of law. ~~Nothing in this~~ *This* paragraph shall ~~have any~~ *not* effect  
13 ~~on~~ the application of Chapter 1 (commencing with Section 1801)  
14 of Title 2 to a home improvement transaction or the financing  
15 thereof.

16 SEC. 4. Section 3050 of the Vehicle Code is amended to read:

17 3050. The board shall do all of the following:

18 (a) Adopt rules and regulations in accordance with Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code governing those matters that are  
21 specifically committed to its jurisdiction.

22 (b) Hear and determine, within the limitations and in accordance  
23 with the procedure provided, an appeal presented by an applicant  
24 for, or holder of, a license as a new motor vehicle dealer,  
25 manufacturer, manufacturer branch, distributor, distributor branch,  
26 or representative when the applicant or licensee submits an appeal  
27 provided for in this chapter from a decision arising out of the  
28 department.

29 (c) Consider any matter concerning the activities or practices  
30 of ~~any~~ *a* person applying for or holding a license as a new motor  
31 vehicle dealer, manufacturer, manufacturer branch, distributor,  
32 distributor branch, or representative pursuant to Chapter 4  
33 (commencing with Section 11700) of Division 5 submitted by any  
34 person. A member of the board who is a new motor vehicle dealer  
35 may not participate in, hear, comment, advise other members upon,  
36 or decide any matter considered by the board pursuant to this  
37 subdivision that involves a dispute between a franchisee and  
38 franchisor. After that consideration, the board may do any one or  
39 any combination of the following:



1 (1) Direct the department to conduct investigation of matters  
2 that the board deems reasonable, and make a written report on the  
3 results of the investigation to the board within the time specified  
4 by the board.

5 (2) Undertake to mediate, arbitrate, or otherwise resolve any  
6 honest difference of opinion or viewpoint existing between any  
7 member of the public, *except a retail motor vehicle purchaser or*  
8 *lessee*, and any new motor vehicle dealer, manufacturer,  
9 manufacturer branch, distributor branch, or representative.

10 (3) Order the department to exercise any and all authority or  
11 power that the department may have with respect to the issuance,  
12 renewal, refusal to renew, suspension, or revocation of the license  
13 of any new motor vehicle dealer, manufacturer, manufacturer  
14 branch, distributor, distributor branch, or representative as that  
15 license is required under Chapter 4 (commencing with Section  
16 11700) of Division 5.

17 (d) Hear and decide, within the limitations and in accordance  
18 with the procedure provided, a protest presented by a franchisee  
19 pursuant to Section 3060, 3062, 3064, 3065, or 3065.1. A member  
20 of the board who is a new motor vehicle dealer may not participate  
21 in, hear, comment, advise other members upon, or decide, any  
22 matter involving a protest filed pursuant to Article 4 (commencing  
23 with Section 3060), unless all parties to the protest stipulate  
24 otherwise.

25 (e) Notwithstanding subdivisions (c) and (d), the courts have  
26 jurisdiction over all common law and statutory claims originally  
27 cognizable in the courts. For those claims, a party may initiate an  
28 action directly in any court of competent jurisdiction.

29 SEC. 5. Section 4456.5 is added to the Vehicle Code, to read:

30 4456.5. If a dealer acquires a used vehicle with a balance due  
31 to a secured party, the dealer shall submit to the department  
32 evidence in the form of a notarized receipt from the secured party  
33 that the dealer has paid off the entire balance prior to transferring  
34 the vehicle, or prior to the date when payment is due, whichever  
35 occurs first. It shall be unlawful for a dealer to offer for sale,  
36 advertise for sale, or transfer a used vehicle with a balance due to  
37 a secured party prior to paying off the entire balance and submitting  
38 the notarized receipt to the department.

39 SEC. 6. Section 11710 of the Vehicle Code is amended to read:

1 11710. (a) Before any dealer's or remanufacturer's license is  
2 issued or renewed by the department to any applicant therefor, the  
3 applicant shall procure and file with the department a bond  
4 executed by an admitted surety insurer, approved as to form by  
5 the Attorney General, and conditioned that the applicant shall not  
6 practice any fraud or make any fraudulent representation which  
7 will cause a monetary loss to a purchaser, seller, financing agency,  
8 or governmental agency.

9 (b) A ~~dealer's franchisee of new motor vehicles'~~ bond shall be  
10 in the amount of *two hundred* fifty thousand dollars ~~(\$50,000)~~  
11 ~~(\$250,000)~~ and an independent dealer's bond shall be in the  
12 amount of one hundred thousand dollars (\$100,000), except the  
13 bond of a dealer who deals exclusively in motorcycles or all-terrain  
14 vehicles shall be in the amount of ten thousand dollars (\$10,000).  
15 Before the license is renewed by the department, the *franchise or*  
16 *the independent* dealer, other than a dealer who deals exclusively  
17 in motorcycles or all-terrain vehicles, shall procure and file a bond  
18 in the ~~amount of fifty thousand dollars (\$50,000)~~ amounts specified  
19 above. A remanufacturer bond shall be in the amount of fifty  
20 thousand dollars (\$50,000).

21 (c) Liability under the bond is to remain at full value. If the  
22 amount of liability under the bond is decreased or there is  
23 outstanding a final court judgment for which the dealer or  
24 remanufacturer and sureties are liable, the dealer's or  
25 remanufacturer's license shall be automatically suspended. In order  
26 to reinstate the license and special plates, the licensee shall either  
27 file an additional bond or restore the bond on file to the original  
28 amount, or shall terminate the outstanding judgment for which the  
29 dealer or remanufacturer and sureties are liable.

30 (d) A dealer's or remanufacturer's license, or renewal of the  
31 license, shall not be issued to any applicant therefor, unless and  
32 until the applicant files with the department a good and sufficient  
33 instrument, in writing, in which the applicant appoints the director  
34 as the true and lawful agent of the applicant upon whom all process  
35 may be served in any action, or actions, which may thereafter be  
36 commenced against the applicant, arising out of any claim for  
37 damages suffered by any firm, person, association, or corporation,  
38 by reason of the violation of the applicant of any of the terms and  
39 provisions of this code or any condition of the dealer's or  
40 remanufacturer's bond. The applicant shall stipulate and agree in

1 the appointment that any process directed to the applicant, when  
2 personal service of process upon the applicant cannot be made in  
3 this state after due diligence and, in that case, is served upon the  
4 director or, in the event of the director's absence from the office,  
5 upon any employee in charge of the office of the director, shall be  
6 of the same legal force and effect as if served upon the applicant  
7 personally. The applicant shall further stipulate and agree, in  
8 writing, that the agency created by the appointment shall continue  
9 for and during the period covered by any license that may be issued  
10 and so long thereafter as the applicant may be made to answer in  
11 damages for a violation of this code or any condition of the bond.  
12 The instrument appointing the director as the agent for the applicant  
13 for service of process shall be acknowledged by the applicant  
14 before a notary public. In any case where the licensee is served  
15 with process by service upon the director, one copy of the summons  
16 and complaint shall be left with the director or in the director's  
17 office in Sacramento or mailed to the office of the director in  
18 Sacramento. A fee of five dollars (\$5) shall also be paid to the  
19 director at the time of service of the copy of the summons and  
20 complaint. Service on the director shall be a sufficient service on  
21 the licensee if a notice of service and a copy of the summons and  
22 complaint are immediately sent by registered mail by the plaintiff  
23 or the plaintiff's attorney to the licensee. A copy of the summons  
24 and complaint shall also be mailed by the plaintiff or the plaintiff's  
25 attorney to the surety on the applicant's bond at the address of the  
26 surety given in the bond, postpaid and registered with request for  
27 return receipt. The director shall keep a record of all process so  
28 served upon the director, which record shall show the day and hour  
29 of service and shall retain the summons and complaint so served  
30 on file. Where the licensee is served with process by service upon  
31 the director, the licensee shall have and be allowed 30 days from  
32 and after the service within which to answer any complaint or other  
33 pleading which may be filed in the cause. However, for purposes  
34 of venue, where the licensee is served with process by service upon  
35 the director, the service is deemed to have been made upon the  
36 licensee in the county in which the licensee has or last had an  
37 established place of business.

38 SEC. 7. Section 11711 of the Vehicle Code is amended to read:

39 11711. (a) ~~If any a person~~(1) shall suffer any loss or damage  
40 by reason of any fraud *or contract or statutory violation* practiced

1 on him or fraudulent representation made to him or her by a  
2 licensed dealer or one of ~~such~~ *the* dealer's ~~salesmen~~ *salespersons*  
3 acting for the dealer, in his or her behalf, or within the scope of  
4 the employment of ~~such~~ *salesman* and ~~such~~ *person* has possession  
5 of a written instrument furnished by the licensee, containing  
6 stipulated provisions and guarantees which the person believes  
7 have been violated by the licensee, or (2) if any person shall suffer  
8 any loss or damage by reason of the violation by ~~such~~ *dealer* or  
9 ~~salesman~~ of any of the provisions of Division 3 (commencing with  
10 Section 4000) of this code, or (3) if any person is not paid for a  
11 vehicle sold to and purchased by a licensee ~~his or her salesperson~~  
12 *in connection with the purchase or lease of a motor vehicle*, then  
13 ~~any such~~ *that* person shall have a right of action against ~~such~~ *the*  
14 dealer, ~~his salesman~~, *his or her salesperson*, and the surety upon  
15 the dealer's bond, in an amount not to exceed the value of  
16 ~~the vehicle purchased from or sold to the dealer~~ *for actual damages*  
17 *plus any incidental and consequential damages and reasonable*  
18 *attorney's fees.*

19 (b) If the state or ~~any~~ *a* political subdivision ~~thereof~~ *of the state*  
20 shall suffer any loss or damage by reason of any fraud practiced  
21 on the state or fraudulent representation made to the state by a  
22 licensed dealer, or one of ~~such~~ *the* dealer's representatives acting  
23 for the dealer, in his or her behalf, or within the scope of  
24 employment of ~~such~~ *the dealer's* representatives, or shall suffer  
25 any loss or damage by reason of the violation of ~~such~~ *the* dealer  
26 or *his or her* representative of any of the provisions of Division 3  
27 (commencing with Section 4000) of this code, or Part 5  
28 (commencing with Section 10701), Division 2 of the Revenue and  
29 Taxation Code, the state or ~~any~~ *a* political subdivision ~~thereof~~ *of*  
30 *the state*, through the department, shall have a right of action  
31 against ~~such~~ *the* dealer, *his or her* representative, and the surety  
32 upon the dealer's bond in an amount not to exceed the value of  
33 the vehicles involved.

34 (c) The failure of a dealer upon demand to pay the fees and  
35 penalties determined to be due as provided in Section 4456 ~~hereof~~  
36 ~~is declared to~~ *shall* be a violation of Division 3 (commencing with  
37 Section 4000) of this code, and Part 5 (commencing with Section  
38 10701), Division 2 of the Revenue and Taxation Code and ~~to~~ *shall*  
39 constitute loss or damage to the state in the amounts of ~~such~~ *those*  
40 fees and penalties determined to be due and not paid.

1 (d) The claims of the state under subdivision (b) shall be  
2 satisfied first and entitled to preference over all claims under  
3 subdivision (a).

4 (e) The claims of ~~any~~ a person under subdivision (a) who is not  
5 a licensee shall be satisfied first and entitled to preference over all  
6 other claims under subdivision (a).

7 SEC. 8. Section 11713.05 is added to the Vehicle Code, to  
8 read:

9 11713.05. Notwithstanding any other provision of law, when  
10 a dealer knew or should have known that he or she lacked sufficient  
11 financial resources to comply with contracts entered into with  
12 motor vehicle purchasers, and the purchasers suffer damages as a  
13 result of the dealer going out of business, the dealer's failure to  
14 satisfy a lien on a vehicle accepted in trade, prior to the transfer  
15 of that vehicle, shall render null and void any otherwise applicable  
16 defense that the dealer, its corporation, or a nonliving entity may  
17 have in law or equity, including, but not limited to, piercing of the  
18 corporate veil or other applicable shield from liability. Such a  
19 violation shall result in a nonrebuttable presumptive finding of  
20 alter-ego, if pled in an action against the dealer's corporation or  
21 other nonliving entity.

22 SEC. 9. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.